

## **EVIDENCE AND SITE CONTROL AGREEMENT**

The parties to this Evidence and Site Control Agreement (“Agreement”) are US Ecology Idaho, Inc. (“US Ecology”), the U.S. Environmental Protection Agency (“EPA”), the State of Idaho Department of Environmental Quality (“DEQ”), and the Occupational Health and Safety Administration (“OSHA”). Other parties may also become signatories to this Agreement with the written concurrence of the parties to the Agreement. US Ecology, EPA, DEQ, OSHA, and any other party that executes this Agreement are collectively referred to as the “Parties.”

US Ecology, EPA, DEQ, and OSHA have initiated separate response and investigations into the incident that occurred on the morning of Saturday, November 17, 2018, at the US Ecology facility located at 20400 Lemley Road in Grandview, ID (the “US Ecology Site” or “Site”). US Ecology has been notified that OSHA is investigating this incident pursuant to its statutory authority. The Parties enter into this Agreement with the intent to ensure appropriate control of the Site and the prompt and orderly preservation, collection, and availability for testing of potentially relevant evidence so that the US Ecology, EPA, DEQ, and OSHA may conduct and complete their respective investigations in accordance with their statutory authorities and responsibilities.

The purpose of this Agreement is to ensure that the Parties: (1) have appropriate opportunities to access the Site and the physical evidence therein in an undisturbed condition; (2) agree in advance to an orderly process by which evidence will be collected, stored, and preserved for additional documentation, testing, and analysis; and (3) establish basic principles for evidence testing, subject to the development of specific testing protocols at a later date.

Consistent with the intent and purpose of this Agreement, nothing herein shall be construed—either expressly or impliedly—to limit the lawful authority of the EPA, DEQ, OSHA, or the U.S. Government to exercise their respective investigative powers as authorized by each agency’s enabling legislation. This Agreement shall not be construed, either expressly or impliedly, to limit any defenses or responses US Ecology may have to actions taken by OSHA, EPA, DEQ, or the U.S. Government in conducting their investigations

### **Terms and Conditions**

The parties mutually understand and agree as follows:

#### *A. Site Preservation*

1. The Parties recognize and acknowledge that changes have been made to the Site immediately following the incident during the course of emergency response.
2. Notwithstanding the EPA's and DEQ's response authority to remove and remediate material contaminated with hazardous substances, pollutants or contaminants at or from the US Ecology facility, other than as provided elsewhere in this Agreement, or unless subsequently agreed to in writing by the Parties to this Agreement, the Parties shall not intentionally move, alter, destroy, rearrange, or otherwise

tamper with any evidence in the exclusion zone and system defined in Paragraph A.I.a. that has potential relevance to the Parties' investigations.

a. Unless otherwise provided for in this Agreement, the Parties agree that the exclusion zone and system defined as the area in and around 20400 Lemley Road in Grandview, ID, as established by the highlighted photo/diagram attached hereto as Exhibit A and incorporated herein, shall remain in an "as is" state until such time as US Ecology, OSHA, EPA and DEQ, begin evidence collection and storage (consistent with the terms of this Agreement), except for planned incident response activities or in the case of an emergency, as those terms are defined below.

b. By mutual written agreement of the parties, the exclusion zone and system under restriction defined in Paragraph A.I.a may be modified as the situation at the site evolves.

3. For the purposes of this Agreement, any "planned incident response activities" are the actions to be taken by US Ecology, the EPA and/or DEQ that are not inconsistent with the National Contingency Plan (NCP), the Clean Water Act (CWA) and/or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

a. US Ecology shall notify OSHA, EPA, and DEQ with reasonable notice, meaning at least twelve (12) hours in advance whenever possible, of all such activities.

b. US Ecology shall document all changes, including but not limited to changes to equipment, instruments, or piping made to the "as is" state of the exclusion zone in the course of carrying out such activities and provide the documentation of changes to OSHA, EPA, and DEQ.

c. US Ecology shall not physically remove materials, equipment, instruments, or piping from their as-found locations within the exclusion zone unless there is no alternative method for rendering the location safe or unless otherwise directed to do so by the EPA On-Scene Coordinator pursuant to his/her authority under the CWA, CERCLA and/or the NCP. If removal is necessary, US Ecology shall document the pre-removal condition, which shall include, at a minimum, photographs or video of the pre- and post-removal conditions; retain the moved items in a secure location; and provide the documentation, and access to the items, to OSHA, EPA, and DEQ. Any items removed from the exclusion zone shall be collected and stored according to the terms of paragraphs 8 and 9 of this Agreement.

3. For the purposes of this Agreement, an "emergency" is a situation (other than planned incident response activities) that poses an imminent and substantial endangerment to the public health or welfare or the environment under Section 106 of CERCLA, 42 U.S.C. § 9606, or a substantial threat of a discharge of a hazardous substance into navigable waters of the U.S. under Section 311 of the CWA, 33 U.S.C. § 1321(c).

a. In the event US Ecology must move or alter some or all of the physical evidence in the exclusion zone due to an emergency, US Ecology shall notify OSHA, EPA, and DEQ as quickly as possible and, if possible, prior to moving or altering the evidence, in order to allow OSHA, EPA and DEQ the opportunity to comment on the proposed alteration or to further document the evidence/site.

b. If such prior notice as outlined in Paragraph A.3.a. is not possible, US Ecology must provide written notice to OSHA, EPA, and DEQ as soon as possible thereafter, meaning at least twelve (12) hours after moving or altering the evidence as set forth in Paragraph A.3.a., which includes the following information: (a) a complete explanation as to why notice could not be provided prior to moving or altering the evidence; (b) a complete description of all actions taken to rectify the emergency; (c) identification of all personnel involved in moving or altering the evidence; (d) a timeline of events; and (e) photographic or video evidence, or other documentation that shows the change in the evidence and/or site.

c. When the emergency has ended, any actions that can change or modify evidence or the accident site itself must cease.

4. US Ecology will facilitate entries into the Exclusion Zone and other areas of the Site relevant to the Parties' investigations. The Parties recognize that full access to document the Site and identify potential evidence is a necessary condition to the release of areas of the Exclusion Zone.

5. US Ecology is responsible for the continued security and protection of the Site and any real or personal property therein, as well as any physical or documentary evidence present on its premises or under the control of its officers, employees, attorneys, agents, or contractors. Nothing in this Agreement shall relieve US Ecology of its obligations under all applicable federal, state, or local law.

6. This Agreement does not relieve US Ecology of its obligations under law to protect the life, health and safety of its employees or any other people affected by the incident under investigation, its property, or any other operations at the US Ecology facility.

7. Any notifications required by this Agreement must be made by facsimile, email, or personal delivery. Each signatory must designate, in writing, the individuals to whom such notice must be provided, including the name of each such individual and his or her email address and a facsimile number. Any signatory may change such designated individuals by providing written notice in accordance with this paragraph. Until further notice is provided, notices must be sent as follows:

**US Ecology:**

**OSHA:**

David Kearns, Area Director  
Boise Area Office  
Occupational Safety and Health Administration  
1387 S. Vinnell Way, Suite 2018  
Boise, ID 83709-1657  
W: (208) 321-2983  
F: (208) 321-2966  
kearns.david@dol.gov

**EPA:**

Stephen Ball, On-Scene Coordinator  
US Environmental Protection Agency

**DEQ:**

Albert Crawshaw  
Idaho Department of Environmental Quality  
1410 N Hilton Street  
Boise, ID 83706

B. *Evidence Collection & Storage*

8. All Parties will have an opportunity to identify and request items they wish to be retained in accordance with the following Evidence Selection and Securing Protocol. Once an item or piece of equipment is identified:

a. If necessary, before removing items, the following steps shall be performed to render the item safe for removal:

- i. US Ecology operations and maintenance will verify items for removal are blinded and blocked.
- ii. As needed, unsupported piping shall be reinforced or supported.
- iii. LEL (flammable atmospheric) testing shall be performed at each location prior to cutting.
- iv. An appropriate fire watch shall be enacted prior to cutting.
- v. Items shall be removed by appropriate methods and may require the execution of a separate written protocol.

b. The evidence will be identified and documented undisturbed in place.

c. When an item is identified, it will be photographed in its “as is state” without tags.

d. Close up photographs will be taken to include distinguishing features and scales.

e. An identification tag will be affixed to the item. The tag will be numbered. The item will be recorded in an “evidence log” that will contain information regarding the date and time, tag number, description of the item and the person making the evidence log entry. The location will also be marked on a drawing of the area. The item will be photographed subsequent to tagging.

f. If a tagged item is not attached to another piece of equipment and can be easily removed, it will be removed from the incident area and transported to the storage area(s).

g. If a tagged item is attached to another piece of equipment and cannot be easily removed, the dismantling process will be photographed or videoed.

h. Before any item is removed and transported from the incident area to the storage area, it will be photographed or videoed and documented.

i. If needed, items shall be decontaminated.

j. Transfer of evidence. If any items of evidence are transferred from secure storage, a chain of custody form will be completed, which will include:

- i. Item number
- ii. Description of item
- iii. Destination
- iv. Analysis planned, if applicable
- v. Name, date, time and signature of person relinquishing item
- vi. Name, date, time and signature of person receiving item

9. All of the evidence will be transported to and secured in a mutually agreed upon storage area(s). The method of transportation and storage of the evidence shall be mutually agreed upon by US Ecology, OSHA, EPA, and DEQ. Site access will be physically controlled by US Ecology while at the Lemley Road facility with prior approval for entry given by OSHA, EPA, and DEQ, which approval shall not be unreasonably withheld. No party shall be able to access the evidence without providing the other parties reasonable, advance notice, meaning at least twelve (12) hours whenever possible, unless 1) conditions exist that require a response to prevent, abate, mitigate, and/or minimize the release or threatened release of hazardous substances, contaminants or pollutants at or from the storage area, or; 2) until the parties come to some other subsequent agreement, entered into in writing, appropriately supplementing this Agreement. All parties may be present at all times during predetermined meetings where the other parties have access to the evidence at issue in order to ensure the integrity of the preserved evidence and the chain of custody of such evidence. Access by any parties to the physical evidence in this case shall be documented in an evidence control log, annotating who accessed what evidence, what (if any) alterations to the evidence occurred, and the duration of each visit.

10. US Ecology shall keep and maintain the evidence log and evidence control log and shall provide them to OSHA, EPA, and DEQ upon request.

11. OSHA, EPA, and DEQ are investigating the incident that occurred on November 17, 2018, and are issuing document requests to US Ecology. Consistent with its legal obligations, US Ecology shall preserve any and all records in its custody and control relevant to the incident. Such documentation shall include emails, memoranda, correspondence, logs, process control data, diagrams, maintenance records, internal or external audits, reports, and any other information that could be relevant to the incident or analysis of its cause(s). Special attention should be paid to electronic information that could be overwritten without intervention. The EPA, DEQ, and OSHA will serve formal document requests or subpoenas upon US Ecology as soon as possible, which may be supplemented with additional requests, as required.

### *C. Testing*

12. Any party desiring to perform non-destructive testing of the evidence covered by this Agreement shall first notify all other Parties and obtain the mutual agreement of all Parties to protocols for removal, chain-of-custody, preservation, and testing. The Parties shall not unreasonably withhold consent.

- a. Any party may be present to observe and document non-destructive testing conducted by any other party.

b. If the Parties cannot reach timely agreement on the non-destructive testing of the evidence, OSHA, EPA or DEQ may seek to compel the production of evidence as provided under 29 U.S.C. §657(b) and 42 U.S.C. § 7412 (r)(6)(L), respectively, and conduct its own non-destructive testing. In this event, OSHA and CSB will allow all Parties to observe and document the non-destructive testing.

c. Any destructive testing must be agreed to by all the Parties and shall be covered under separate protocols that must be mutually agreed upon by the Parties. The Parties shall not unreasonably withhold consent.

*D. Samples and Sampling*

13. The Parties may take relevant samples, as they deem necessary and appropriate, in furtherance of their respective investigations. If the Parties determine that the available amount of a particular material is insufficient to allow a split sample and testing by multiple parties or a previously taken sample by US Ecology is deemed to be the superior evidence by OSHA, EPA, and DEQ, all Parties shall be notified and a joint sampling and testing protocol will be developed for that particular material with any testing results or reports to be shared amongst the parties.

*E. Additional Terms*

14. Any terms or conditions contained within this Agreement apply to the Parties, as well as their officers, employees, agents, attorneys, contractors, successors in interest, and subrogees, as well as all such personnel employed by any other related corporate entities, including but not limited to parent companies, holding companies, subsidiaries, and business partners of any sort.

15. This Agreement is effective as of the day it is executed by the Parties. This Agreement will remain in effect until such time as the Parties mutually agree that it is no longer necessary, or until a party gives written notice to all Parties that it no longer intends to be bound by this Agreement. This Agreement cannot be changed, modified, or supplemented except as provided herein or mutually agreed in writing by the Parties hereto.

16. This Agreement constitutes the entire agreement between US Ecology, OSHA, EPA, and DEQ regarding evidence preservation associated with the explosion at the US Ecology on November 17, 2018 and merges any and all prior discussions and negotiations. Any prior understandings or representations of any kind preceding the date of this Agreement shall not be binding on any party except as incorporated in this Agreement itself. Specifically, OSHA, EPA, and DEQ through their respective authorized signatories, each acknowledge that it is not relying on any promises, oral or written, other than those terms and conditions contained in this Agreement.

17. Nothing herein will be interpreted to broaden or lessen any right in law for the EPA, DEQ, and OSHA to conduct their independent investigations of the incident at issue.

18. Nothing herein will be construed to broaden or lessen any authority or jurisdiction of OSHA, EPA, or DEQ with respect to US Ecology's operations including, but not limited to, the rebuilding, reconstruction, or renewal of operations at the Site as a result of the November 17, 2018 incident. Should the EPA, DEQ, or OSHA determine that US Ecology is not abiding by the terms of any provisions contained within this

Agreement, US Ecology understands that the EPA, DEQ, and OSHA may, as each agency deems appropriate, issue one or more subpoenas for any and all evidence, and/or seek injunctions, appropriate court orders, and/or other necessary relief in the appropriate federal district court.

Executed this \_\_\_\_\_ day of November, 2018, by:

\_\_\_\_\_  
By: (name and title)  
US Ecology Idaho, Inc.

\_\_\_\_\_  
By: Stephen Ball, On-Scene Coordinator  
U.S. Environmental Protection Agency

\_\_\_\_\_  
By: (name and title)  
State of Idaho Department of Environmental Quality

\_\_\_\_\_  
By: David Kearns, Area Director  
Occupational Health and Safety Administration

## **Attachment A—Exclusion Zone**